

**APPLICANTS:**  
**Kelly McGill and Geraldine McGill**

**REQUEST: Special Exception to allow  
commercial motor vehicle and equipment storage  
and construction services and suppliers use in the  
Agricultural District**

**HEARING DATE: July 20, 2005**

**BEFORE THE  
ZONING HEARING EXAMINER  
FOR HARFORD COUNTY  
BOARD OF APPEALS  
Case No. 5484**

### **ZONING HEARING EXAMINER'S DECISION**

**APPLICANTS:** Kelly McGill and Geraldine McGill

**LOCATION:** 2628 Rocks Road, McGill Farm, Forest Hill  
Tax Map: 33 / Grid: 3C / Parcels 424 & 26  
Third Election District (3rd)

**ZONING:** AG / Agricultural District

**REQUEST:** Special exceptions, pursuant to Sections 267-53D(1) and 267-53H(1) of the Harford County Code, to allow commercial motor vehicle and equipment storage and construction services and suppliers use in the Agricultural District.

#### **TESTIMONY AND EVIDENCE OF RECORD:**

First testified Kelly McGill, co-applicant and co-owner of the subject property. Mr. McGill owns and operates a construction services business, primarily engaged in excavating and hauling. The subject property consists of two properties, a 26.21 acre parcel and a 4.9 acre parcel. His family home is on the smaller parcel. Mr. and Mrs. McGill, their two sons, and daughter live in the residence. He and his wife have operated the business from the larger parcel for a number of years, apparently without complaint. However, last fall Mr. McGill was contacted by the Harford County Department of Planning and Zoning and was told for the first time that his use of the property was not allowed without a special exception. According to Mr. McGill, he immediately made application for the appropriate special exceptions.

Mr. McGill described, with the assistance of a series of photographs marked Exhibit 8, the subject property. The subject property is located off Rocks Road, on MD Route 24, close to its intersection with Grier Nursery Road. It appears to be at a somewhat lower elevation than the roadbed of Rocks Road, as no part of the buildings associated with the hauling and excavating operation, nor the trucks or other equipment, nor the Applicant's home, is visible from MD Route 24. Only as one proceeds down the driveway into the property from Route 24 do the home of the Applicants and the storage buildings on the property first become visible.

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Mr. McGill's operation utilizes two large outdoor equipment storage sheds. Another large shed is located on the property which, he says, is dedicated to agricultural uses. Mr. McGill stated that his property is very clean, with no outside storage of any commercial supplies. He indicated he is concerned about keeping a clean operation. The photographs introduced by the Applicant amply verify his testimony, showing a large equipment parking area in front of the equipment storage sheds, located behind his house, all maintained in a very clean and organized fashion.

Mr. McGill further stated, again substantiated by the photographs in the file, that a forested area completely surround his property, particularly the equipment storage area and the equipment sheds. According to Mr. McGill, he cannot see other dwellings from his property, nor can residents of any surrounding dwellings see into his property.

The Applicant also introduced an aerial view of the subject property accepted as Exhibit No. 9. This aerial view also substantiates the Applicant's testimony that no other homes are located within view of the equipment sheds and the commercial operation on the subject property.

Mr. McGill has had as many as eight (8) dump trucks in his business operating from the property in the past. However, he currently has six (6) dump trucks, plus other related equipment such as grinders, loads, crawlers, front-end loaders, and the trailers necessary to move the vehicles. Mr. McGill, because his business activity fluctuates, is accordingly asking permission to store up to ten (10) dump trucks and an additional ten (10) pieces of other commercial equipment.

Mr. McGill stated that much of this equipment is stored off his property at various job sites and only returns to his property at the end of the job, or for periodic maintenance and repair. Dump trucks usually leave the subject property about 4:30 in the morning and return between 3:00 – 3:30 p.m. Mr. McGill described only minor maintenance being performed on the property, with the most extensive being oil changes and tire changes and repairs. He does not allow junk parts or other debris to accumulate on the property, and maintains no other construction supplies on the property. Waste oil is maintained in a facility on-site and is periodically removed by a licensed waste hauler. Discarded tires are also periodically removed and are not allowed to accumulate.

Mr. McGill has two above-ground fuel storage tanks on site. One is a 500 gallon tank and the other is a 750 gallon tank. Mr. McGill states that these tanks fully meet all applicable State and Federal licensing requirements.

Mr. McGill stores no building materials on site. He is seeking permission to do routine maintenance on site, which would be no more than necessary oil and other fluid changes, and tire repair and replacement.

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Mr. McGill has spoken to his neighbors; none have expressed any opposition. An immediately adjoining neighbor, Mr. Gorrell, was not able to be in attendance but submitted a letter indicating his lack of opposition to the request. (See Applicants' Exhibit 10).

Mr. McGill was asked if he agrees with the conditions recommended by the Harford County Department of Planning and Zoning. He agrees with all conditions except the condition that he be required to consolidate his two parcels. This condition was suggested by the Department, apparently as the smaller 4.9 acre parcel on which the McGill house is located does not meet all applicable setbacks from the surrounding 26.21 acre parcel. Mr. McGill said he would rather relocate the property line between the two parcels to avoid having to combine the two parcels into one. All other conditions are agreeable. Specifically, he agreed to the limitation of 10 dump trucks and 10 pieces of other commercial equipment, plus the associated trailers. Mr. McGill further indicated his acceptance of a new condition which would terminate the special exception if he sold either of the two parcels. Mr. McGill also indicated acceptance of a proposed condition that junk tires not be allowed to remain on the site for more than 3 days, and that he maintain a contract with a licensed waste oil hauler in order to insure that the waste oil is properly removed.

A series of neighbors then testified in support of Mr. and Mrs. McGill's application.

First testified Roy Clark, 2620 Rocks Road, Forest Hill. Mr. Clark has lived directly across MD Route 24 since 1962. He has no objection to the proposed use. According to Mr. Clark, Mr. McGill's equipment can neither be seen nor heard.

Next testified Francis Isennock, a resident of 2520 Rocks Road, Forest Hill. Mr. Isennock has lived on his property since 1973. He adjoins both the subject property and Mr. Gorrell's property on the south side. Mr. Isennock was not aware of the proposed use until the zoning application was filed and he visited the McGill property. He says it is a very clean, well-organized operation, and he has no objection whatsoever to the proposed use.

Next testified Arthur Lundquist, who lives with his wife at 2700 Rocks Road. Mr. Lundquist and his wife have no objection to the proposed use.

Next testified Michael Beiter. Mr. Beiter lives at 2632 Rocks Road. Mr. Beiter has no objection to the proposed use.

Next testified Lee Cunningham, who was offered and accepted as an expert in land use and transportation planning. Mr. Cunningham testified that he is familiar with the application and the subject property, had visited the subject property, had made inquiries into the traffic conditions along Route 24, and has concluded the proposed use would have no adverse impact. Indeed, Mr. Cunningham stated that the property was a virtually ideal location for this particular use. It is on a major roadway; is secluded and surrounded by mature trees; and is a rather large parcel.

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Mr. Cunningham has determined that the sight distances along MD Route 24 at its intersection of the driveway of the subject property are adequate. Sight distance to the north from the driveway is approximately 520 feet. Sight distance to the south was even longer. Mr. Cunningham felt that these are excellent sight distances. Mr. Cunningham also checked the history of accidents at MD Route 24 and Grier Nursery Road. He found that there were three reported accidents over the past years. He investigated details of those accidents and believes all were random, caused by driver error, and there was no pattern to the accidents so as to indicate a potential problem with the engineering or with the configuration of the roadways and intersection.

Mr. Cunningham also determined the State Highway Administration traffic volume count for MD Route 24 and Grier Nursery Road. The volume is approximately 3,570 cars per day. Mr. Cunningham then determined that the peak hour traffic would be approximately 550 – 560 cars per hour. Mr. Cunningham indicated this was very acceptable traffic flow and did not represent an unacceptable condition of the roadway. As a result, the impact of the proposed use on existing traffic should be minimal. Mr. Cunningham's analysis is that the traffic flow on MD Route 24 at this location is not significant.

Accordingly, Mr. Cunningham believes the application should be approved, as having no adverse impact.

Next for the Department of Planning and Zoning testified Dennis Sigler. Mr. Sigler, agreeing with the findings of the Department, stated that the proposed use conforms with all applicable standards. The Department believes that Mr. McGill's modification of his lot line so as to eliminate the setback problem on the 4.9 acre parcel is acceptable and, accordingly, the Department would no longer require that the two lots be combined.

There was no testimony or evidence given in opposition.

### **APPLICABLE LAW:**

Section 267-53D(1) of the Harford County Code states:

*D. Motor Vehicle and related services.*

*(1) Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:*

*(a) The vehicles and equipment are stored entirely within an enclosed building or fully screened from view of adjacent residential lots and public roads.*

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- (b) The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.*
- (c) A minimum parcel area of two (2) acres shall be provided.*

Section 267-53H(1) of the Harford County Code, states:

*H. Services.*

- (1) Construction services and suppliers. These uses may be granted in the AG and VB Districts, provided that a buffer yard ten feet wide shall be provided around all outside storage and parking areas when adjacent to a residential lot or visible from a public road.*

Section 267-9I of the Harford County Code, “Limitations, Guides and Standards” is also applicable and will be discussed below.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

Special exceptions, of course, share the presumption that they are in the best interest of the general welfare and are accordingly presumptively valid. See People’s Counsel v. Mangione, 584 A.2d 1318 (1991). A special exception is analogous to a principal permitted use in that it is permitted in its particular district, provided all specific, and general conditions are met. There must further, as part of this analysis, be a finding that there is no greater harm at the proposed location than there would be, by this or a similar use, at any other permitted location within the zone. See Schultz v. Pritts, 291 Md. 1 (1981).

Accordingly, it must first be determined that this particular special exception use meets its specific requirements. Those requirements are as follows:

Section 267-53D(1) of the Harford County Code states:

*D. Motor Vehicle and related services.*

- (1) Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:*

The subject property is zoned AG/Agricultural.

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- (a) *The vehicles and equipment are stored entirely within an enclosed building or fully screened from view of adjacent residential lots and public roads.*

The vehicles and equipment will be stored in an area that is not visible from the road or adjacent properties due to the topography of the property and the existing forested areas. The Applicants may also utilize the 152 foot by 66 foot building, or the 24 foot by 56 foot building for storage. The 100 foot by 20 foot building can not be used for the business since it does not meet the minimum setback of 40 feet from the property line. The Applicant testified that this building is used for agricultural purposes only, which is a principal permitted use.

- (b) *The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.*

There will be no sales of vehicles or equipment at this location. The only service performed will be minor maintenance and repairs of the Applicants' own vehicles and equipment.

- (c) *A minimum parcel area of two (2) acres shall be provided.*

The Applicants' two parcels are 4.9 acres and 26.21 acres.

Section 267-53H(1) of the Harford County Code, states:

### *H. Services.*

- (1) *Construction services and suppliers. These uses may be granted in the AG and VB Districts, provided that a buffer yard ten feet wide shall be provided around all outside storage and parking areas when adjacent to a residential lot or visible from a public road.*

As previously stated, the area used for outside storage is not visible from the road or adjacent properties. The buffer areas are adequate.

The proposed uses, accordingly, meet all specific, applicable standards. However, the general standards of Section 267-9I must then be examined to determine if a real or potential adverse impact exists.

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*Section 267-9I, "Limitations, Guides and Standards".*

- (1) *The number of persons living or working in the immediate area.*

The subject property is located in a rural area of the County. The primary land use in the area is Agriculture, with large active farms and areas of dense woodland. There also exists some large lot residential subdivisions in the area. The proposed use should not adversely impact individuals living or working in the area.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

MD Route 24 is a State owned and maintained road designated as a Major collector Road in the Harford County Transportation Plan. The Applicants' driveway is opposite the intersection of Grier Nursery Road and MD Route 24. Sight distance is good and in both directions and the uncontradicted testimony of the Applicants' expert witness was that the proposed use would have no adverse impact on traffic.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the county.*

The use is permitted in the Agricultural District as a Special Exception with Board of Appeals approval. The proposed storage area for the vehicles and equipment is approximately 1200 feet back from Route 24. Because of the topography and existing woods, the use cannot be seen from the road and/or adjacent properties. The Applicants can meet or exceed the requirements for the intended use. The request will not have an adverse fiscal impact on the County.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

No adverse impact from any such characteristic has been identified.

- (5) *Facilities for police, fire protection, sewage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.*

The Harford County Sheriff's Office and the Maryland State Police will provide police protection. The Forest Hill and Bel Air Volunteer Fire Companies will provide fire protection and emergency services. The property is served by private well and septic system. A company of the Applicants' choice will handle trash collection.

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- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

The request is consistent with generally accepted planning principles and practices.

- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals and similar places of public use.*

The proposal should have no impact on any of the uses listed in this subsection.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposal is consistent with the Master Plan.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open spaces.*

The proposal will have no impact on surrounding natural features or on opportunities for recreation and open spaces.

- (10) *The preservation of cultural and historic landmarks.*

No such landmarks have been identified.

Accordingly, an examination of Section 267-9I reveals no real or potential impact of the proposed use. In many respects, as stated by Mr. Cunningham, the subject property is an almost ideal location for these special exceptions, at least as they are conducted by the Applicants. Accordingly, it is found that the proposed special exceptions will have no greater impact at the subject property than they would if located elsewhere within the agricultural zone.

### **CONCLUSION:**

The proposed special exceptions, which are presumed to be principally allowed within this district, comply with all specific and general conditions. It is further found that the proposed special exception should have no greater impact at the subject property than at any other location within the zone. Accordingly, the requested special exceptions are hereby approved, subject to the following conditions:

1. Junked and discarded tires shall not be allowed to accumulate on the property for more than 30 days.
2. Waste oil shall be properly stored in a State certified facility, and a contract shall be maintained with a licensed waste oil hauler for its proper removal.



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3. The property shall at all times be kept free of junk, debris and waste.
4. The Applicant shall file a new subdivision plat re-aligning the lines of the two parcels so as to provide required setbacks.
5. The Applicants shall submit a detailed site plan to be reviewed and approved through the Development Advisory Committee.
6. The Applicants shall obtain all necessary permits and inspections for the uses.
7. The approval is for the Applicants only and shall terminate upon the sale of the property or excavating business.

Date: August 16, 2005

ROBERT F. KAHOE, JR.  
Zoning Hearing Examiner

**Any appeal of this decision must be received by 5:00 p.m. on SEPTEMBER 14, 2005.**